II. REMARKS

This amendment and reply is submitted in response to a "Non-Final" Office Action (mailed on June 25, 2004). In response, applicants have cancelled claims 7-9, amended method claims 1-6, and added new system claims 10-15, as is indicated on the preceding pages. Applicants respectfully request that these amendments be entered, and that the examination of this application proceed with respect to the claims as amended.

A. Objection to Claim 9 for Informality (35 U.S.C. §112)

Claim 9 has been cancelled.

B. Rejection of All Claims Based Upon 35 U.S.C. §102(e) In View of the Loy Patent

The Examiner has rejected all of the claims 1-9 as unpatentable under 35 U.S.C. §102(e) In View of U.S. Patent No. 6,363,524 which issued to Eric V. Loy on March 26, 2002 and which was filed on September 10, 1999, almost two years before the present application was filed on August 8, 2001.

Reconsideration of this ground for rejection is respectfully requested with respect to the claims as amended. The claims now clearly distinguish the present invention from the teachings of Loy, as is explained below.

1. The Teachings of the Loy Patent

Both the Loy patent (see Figure 2 of the Loy patent) and the present application (compare to Figure 11 of the present application) teach the organization of program patches into patch trees (Loy calls them patch families), such that newer (or more current) patches which supersede one or more older (or less current) patches are positioned to the right of the older patches in each patch tree drawing (having more than one patch). Hence, the newer patches to the right may be called successor patches. Both the Loy patent and the present application teach using programs to search through these patch trees performing tests to

determine which patches are to be selected and then recommended as candidates for installation in a given system.

Both the Loy patent (see element 408 in Figure 4, discussed below) and the present application (see the parenthesized numbers in Figure 4, also discussed below) teach associating parameter values with individual patches. But Loy's parameter values differ from those introduced in the present application.

The teachings of Loy thus differ from those of the present application as to what the patch parameters are and as to how these parameters are used to determine the selection of which software patches to recommend for installation on any given computer system.

In the Loy patent, each patch is accompanied by "patch stats 408" (see Figure 4) which, Loy teaches, include at least two parameters for each patch: a first parameter indicating whether the patch is the first, or oldest, patch in a series of successor patches to introduce a correction for some particularly critical defect; and a second parameter indicating whether the patch is successor to such a patch that is the first to correct such a critical defect. (Loy, col. 4, lines 23-24). Loy teaches that:

> Frequently, people desire only to install patches that are necessary to correct critical errors. Thus, in such situations, non-critical patches need not be installed. In fact, many supersedes patches need not be installed, if certain prior critical patches have already been installed. In systems having a number of patches, it is often a difficult or painstaking process to determine whether a given supersedes patch is necessary, or whether the critical defect corrected therein has already been corrected by a previously installed patch. [Loy patent, col. 1, lines 43-52]

The remainder of the Loy patent then explains Loy's automated method of achieving this objective through analysis of these parameters.

2. The Present Invention Differs from That of Loy

The present invention does not teach associating parameters with patches to indicate whether they are the first to correct critical defects or whether they supersede such patches that are the first to correct critical defects. As is illustrated in the Figures 4 and 13-15 of the present application, the present invention associates with each patch a single parameter that is a number between 1 and 3. This number indicates how reliable – how well-tested – each

patch is. In the drawings, this reliability number appears in parenthesis following the name of each patch in Figures 4 and in Figures 13-15.

> FIGS. 4 and 15 also illustrate a number in parenthesis opposite the name of each patch. This number indicates the reliability of each patch. A rating of "1" indicates that a patch is new and has undergone little testing. A rating of "2" indicates that the patch has been available for use for some limited amount of time and has been installed on at least some minimal number of systems. A rating of "3" indicates that the patch has undergone some system testing. Clearly, a higher rated patch corresponds to a more tested patch and therefore a more reliable patch. [present application, paragraph [0006]]

The present invention thus takes a different approach to the selection of patches than does Loy, focusing upon how well tested and thus reliable each patch is, rather than focusing upon how critical the defect is that each patch repairs.

3. The Claims, As Amended, Are Patentable Over Loy's Teachings

The claims reflect this difference. They are worded such that at least some patches are associated with information defining their reliability. The process of selecting which patches to recommend as candidates for installation is then a process that involves comparing the reliability of successor patches. This reliability comparison testing is carried out by the program described in Figures 5 through 9 of the application. That program walks through each patch tree containing patches for the files (or file sets) installed on a given computer system and compares the reliability of successor patches. It then selects a set of patches that are as current and up-to-date as is possible consistent with avoiding whenever possible the installation of patches that are in need further testing. This wording appears in all three of the independent claims 1, 5, and 10, and thus it governs all of the claims now before the Examiner. Thus, all of the claims 1-6 and 10-15 are allowable over the Loy patent, which contains no teachings similar to this.

Allowance of all the claims is respectfully requested.

B. Conclusion

Applicants believe that the present application, as amended, is now in condition for allowance. Early and favorable reconsideration and allowance of this application, as amended, is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1450. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1450. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1450.

Respectfully submitted,

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